



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 3, 1991

Ms. Jackee Cox
General Counsel
Texas Department of Criminal Justice
P. O. Box 99
Huntsville, Texas 77342-0099

OR91-613

Dear Ms. Cox:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 14190.

You have received a request for information relating to certain expenses incurred by the executive director of the Texas Department of Criminal Justice (the department). The request includes a complete listing of all expenses relating to air travel, ground transportation, entertainment, hotel and motel accommodations, the make, model, and year of state-owned aircraft assigned to the executive director, and all flight logs. You inform us that you are willing to release most of the requested information. You have submitted to us for review, however, information responsive to the request that you claim is excepted from required public disclosure by sections 3(a)(1) and 3(a)(3) of the Open Records Act.

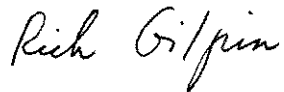
Previous open records decisions issued by this office resolve your request. Open Records Decision No. 555 (1990) held that the section 3(a)(3) exception is applicable when litigation is pending or may be reasonably anticipated and if the requested information relates to that litigation. Section 3(a)(3) forces parties to a lawsuit to obtain relevant information through the normal process of discovery. Open Records Decision No. 551 (1990) at 4.

You advise us that some of the requested information relates to settlement negotiations, and you list a number of cases to which the information relates. You do not substantiate any claim, however, that any of the listed cases are pending or that any of the requested information relates to those cases. In addition, you have failed to explain your reasons for claiming a section 3(a)(1) exception.

The custodian of records has the burden of proving that records are excepted from public disclosure. Attorney General Opinion H-436 (1974). If a governmental body fails to show how an exception applies to the records, it will ordinarily waive the exception unless the information is deemed confidential by law. *See* Attorney General Opinion JM-672 (1987). We have no basis on which to conclude that the requested information is excepted from required public disclosure by sections 3(a)(1) or 3(a)(3) of the Open Records Act. Accordingly, unless the information is made confidential by law, it must be released.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR91-613.

Yours very truly,



Rick Gilpin
Assistant Attorney General
Opinion Committee

RG/GK/lcd

Ref.: ID# 14190

cc: Mr. Bryan Denson
The Houston Post
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